



U.S. Customs and
Border Protection

OBP 50/10.9-C

MAR 20 2009

MEMORANDUM FOR: All Chief Patrol Agents
All Division Chiefs (b)(6)(b)(7)(C)

FROM: David V. Aguilar
Chief
U.S. Border Patrol

SUBJECT: Implementation of the William Wilberforce Trafficking Victims
Protection Reauthorization Act of 2008

In December 2008, Congress approved the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA). Included in the TVPRA 2008 are new requirements for the Department of Homeland Security (DHS) to enhance efforts in combating the trafficking of children along the borders of the United States and at U.S. ports of entry.

In accordance with the TVPRA, Customs and Border Protection (CBP) has developed Interim Guidance for Processing Unaccompanied Alien Children (UAC), and created CBP Form 93 - Unaccompanied Alien Child Screening Addendum (attached). The provisions of this Act become effective Monday, March 23, 2009.

Personnel will continue to process unaccompanied alien children according to current procedures. Agents will also screen all UAC using CBP Form 93 (screening addendum) for possible victimization. The completed form will become a part of the A-file or voluntary return packets. Agents should use the form in hard copy until made available in (b)(7)(E) and on the CBPnet under CBP forms. As a reminder, all personnel should be current with annual training requirements including Unaccompanied Minors – Flores v. Reno and Human Trafficking Awareness Training.

Sectors should ensure that when a UAC is processed under 240 proceedings, the ICE Field Office Juvenile Coordinator (FOJC) and the Department of Health and Human Services – Office of Refugee Resettlement (HHS/ORR) are notified as soon as possible to arrange placement. Please continue to use local FOJC points of contact when notifying ICE of a UAC in custody. HHS – ORR can be reached at (202) (b)(6)(b)(7)(C) or via e-mail at (b)(6)(b)(7)(C). Both the FOJC and ORR should receive an electronic or faxed copy the ORR Division of Unaccompanied Children Services Form.

All Chief Patrol Agents will ensure that a copy of this memorandum and attached interim guidance is available to all personnel. Staff may direct questions to Assistant Chief (b)(6)(b)(7)(C) (b)(6)(b)(7)(C) (202) (b)(6)(b)(7)(C) Operations Officer (b)(6)(b)(7)(C) (202) (b)(6)(b)(7)(C) or Supervisory Border Patrol Agent (b)(6)(b)(7)(C) (202) (b)(6)(b)(7)(C)

U.S. Customs and Border Protection
Interim Guidance on Processing Unaccompanied Alien Children in accordance with
TVPRA

The William Wilberforce Trafficking Victims Protection Reauthorization Act, 2008 (TVPRA) was signed into law on December 23, 2008. The TVPRA will significantly impact CBP operations regarding unaccompanied alien children (UAC) apprehended by CBP at and between the ports of entry. Below are specific guidelines that all CBP officers and agents should use to determine the appropriate immigration proceedings and applicable procedures for the treatment of UAC. CBP is obligated to initiate the changes from the TVPRA beginning March 23, 2009. The TVPRA mandates, with limited exceptions, that all UAC CBP seeks to remove from the United States must be placed in removal proceedings under section 240 of the Immigration and Nationality Act (INA).

The term "UAC" is defined by section 462(g) of the Homeland Security Act of 2002 (6 USC § 279(g)) as a child who:

- (A) has no lawful immigration status in the United States¹;
- (B) has not attained 18 years of age; and
- (C) with respect to whom—
 - (i) there is no parent or legal guardian in the United States; or
 - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

CBP created CBP Form 93, Unaccompanied Alien Child Screening Addendum, for additional guidance (attached). If there is a reasonable claim or suspicion that an alien in CBP custody is under 18 years of age and the other criteria listed in the definition above are met, then the alien shall be treated as a UAC. The TVPRA requires Health and Human Services (HHS), in consultation with DHS, to identify procedures to make a prompt determination of age of an alien in CBP custody. CBP will continue to follow established procedures regarding age determination.

Typically, CBP should accept verifiable permission slips and other equivalent evidence as appropriate documentation indicating temporary guardianship. For instance, an alien child traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization under the supervision of an adult affiliated with the organization should be considered to be traveling with a guardian.

The TVPRA clarifies family reunification procedures for CBP. As of March 23, 2009 CBP may only reunify alien children with parents or legal guardians who are in possession of supporting documentation and are within the United States. HHS is responsible for the determination that any other proposed guardian, including a family member who lacks documentation of guardianship (e.g. grandparent, aunt/uncle, and brother/sister), is capable of providing care and physical custody.

¹ Children under the age of five who are found within the United States, commonly referred to as "foundlings" are assumed to be United States citizens and, as such, have lawful immigration status in the United States.

CBP will process UAC expeditiously and complete the documentation necessary for case processing. If the UAC is under 14 years of age, or unable to understand his or her rights, the apprehending officer or agent must be sure to read and explain all documents in a language that the UAC can understand.

Special Rules for Children from Contiguous Countries (UAC Screening):

The TVPRA states that any UAC determined to be a national or habitual resident of a country that is contiguous with the United States shall undergo a screening process before the UAC may be returned.

UAC Screening: CBP may allow a UAC who is a national or habitual resident of a country that is contiguous with the United States (i.e. Canada and Mexico) to withdraw the application for admission and/or be voluntarily returned if CBP determines that all three of the below-listed criteria exist:

1. The UAC is able to make an independent decision to withdraw the application for admission to the United States and/or be voluntarily returned to his/her country of nationality or last habitual residence.
 - a. CBP must determine whether the UAC is able to make an independent decision on a case by case basis. However, there are a few factors that CBP may take into consideration;
 - i. UAC 14 years of age and older should be considered presumptively able to make an independent decision unless circumstances indicate otherwise.
 - ii. UAC under the age of 14 should be considered presumptively unable to make an independent decision unless circumstances indicate otherwise.
 - b. The guidelines above do not alleviate the need for the officer or agent to determine the ability of the UAC to make an independent decision on a case-by-case basis. These presumptions may be overcome based on a number of factors including, but not limited to, the child's intelligence, education level, familiarity with the immigration process, and physical and mental state at the time of processing. If it is believed that UAC does not fully understand his/her rights, then removal proceedings will be initiated under section 240 of the INA and the UAC will be transferred to ORR custody. The basis for all determinations regarding independent decisions will be annotated in the narrative of the Form I-213.
2. The UAC does not have a fear of returning to his or her country of nationality or last habitual residence owing to a credible fear of persecution.
 - a. CBP will use the UAC Screening Addendum, CBP Form 93, to provide the UAC with an opportunity to express such a fear of returning. If the UAC indicates a fear or CBP identifies factors indicating a fear is likely to exist, then removal proceedings will be initiated under section 240 of the INA and the UAC will be transferred to ORR custody.

3. The UAC has not been a victim of a severe form of trafficking in persons and there is no credible evidence that the UAC is at risk of being trafficked upon return to his or her country of nationality or last habitual residence.
 - a. CBP developed a UAC Screening Addendum, CBP Form 93, to assess the likelihood that a UAC has been a victim of trafficking or is at risk of being trafficked. If the UAC claims to have been a victim, or appears to be at risk, removal proceedings will be initiated under section 240 of the INA and the UAC will be transferred to ORR custody. CBP will refer these cases to U.S. Immigration and Customs Enforcement (ICE), Office of Investigations (OI), for further investigation.

If CBP determines that the UAC meets **all** of the above criteria, then the UAC may be processed as a withdrawal or voluntary return. Current policies regarding repatriation, as outlined by local Repatriation Agreements, remain in effect. UAC must be returned to appropriate trained officials of contiguous countries during reasonable business hours.

If a UAC does **not** meet all of the above criteria or if CBP **cannot** make a determination within 48 hours of apprehension of the UAC, then the UAC shall be placed in removal proceedings under section 240 of the INA and immediately transferred to ORR.

Visa Waiver Program (VWP)

UAC who apply for admission under section 217 of the INA who are determined to be ineligible for admission under that section or to be inadmissible to the United States under section 212 of the INA (other than for lack of a visa), or who are in possession of and present a fraudulent or counterfeit travel documents should be refused admission into the United States. CBP may continue to process these UAC as VWP Refusals with the Screening Addendum used as a guide for assessing the risk of trafficking and/or credible fear. Generally, a UAC applying for admission under the VWP who expresses a fear of returning to his or her country of nationality or last habitual residence owing to a credible fear of persecution or who has been a victim of trafficking or who is at risk of being trafficked should be referred for a limited review hearing by an Immigration Judge using Form I-863. UAC who are or who may be victims of trafficking will also be referred to ICE-OI and custody will be transferred to ORR. UAC apprehended by CBP and amenable to removal under section 217 of the INA will be placed in removal proceedings under section 240 of the INA and custody will be transferred to ORR.

All Other Children:

UAC who do not meet the exceptions above and whom CBP seeks to remove from the United States must be placed in removal proceedings under section 240 of the INA. Immediate notifications to the Juvenile Coordinator within ICE Detention and Removal Operations (DRO) and ORR, Division of Unaccompanied Children's Services (DUCS) must occur. Notification must occur within 48 hours from the apprehension or discovery of a UAC or any claim or suspicion that an alien in custody is unaccompanied and under the age of 18. This will expedite the transfer of custody and placement of UAC into ORR facilities.

CBP will process UAC expeditiously and complete the documentation necessary for inclusion in the alien file (A-file). A Form I-770 must be completed and a copy provided to all UAC. If the UAC is under 14 years of age, or unable to understand Form I-770, the apprehending officer or agent must be sure to read and explain all documents in a language that the UAC can understand. The attached A-file Preparation Guide has been designed to assist officers and agents in ensuring that all appropriate documents have been completed.

When CBP issues an NTA to a UAC under 14 years of age, it may be necessary to delay service of the NTA until custody can be transferred to ORR. ORR should sign the NTA and other legal documentation and receive all copies of legal documentation on behalf of the UAC.

Custody of the UAC will be transferred to ORR (generally through DRO) as soon as possible. Consistent with the language of the TVPRA, custody must be transferred to ORR no later than 72 hours after determining that a child is a UAC. This does not preclude an earlier transfer as existing CBP policy seeks to accomplish custody transfer of all UAC within 24 hours.

While awaiting transfer to an ORR-designated facility, UAC must be held in a suitable area in compliance with the Flores Settlement Agreement. CBP will separate UAC from unrelated adults whenever possible. Where such separation is not immediately possible, a UAC should not be detained with an unrelated adult for more than 24 hours. All post-arrest facilities, including temporary holding areas, will provide access to:

- toilets and sinks;
- drinking water and food, as appropriate;
- emergency medical assistance;
- adequate temperature control and ventilation; and,
- adequate supervision to protect UAC from others.

When a UAC is apprehended and is amenable to criminal prosecution, notification to ORR within 48 hours and transfer to ORR within 72 hours is necessary.

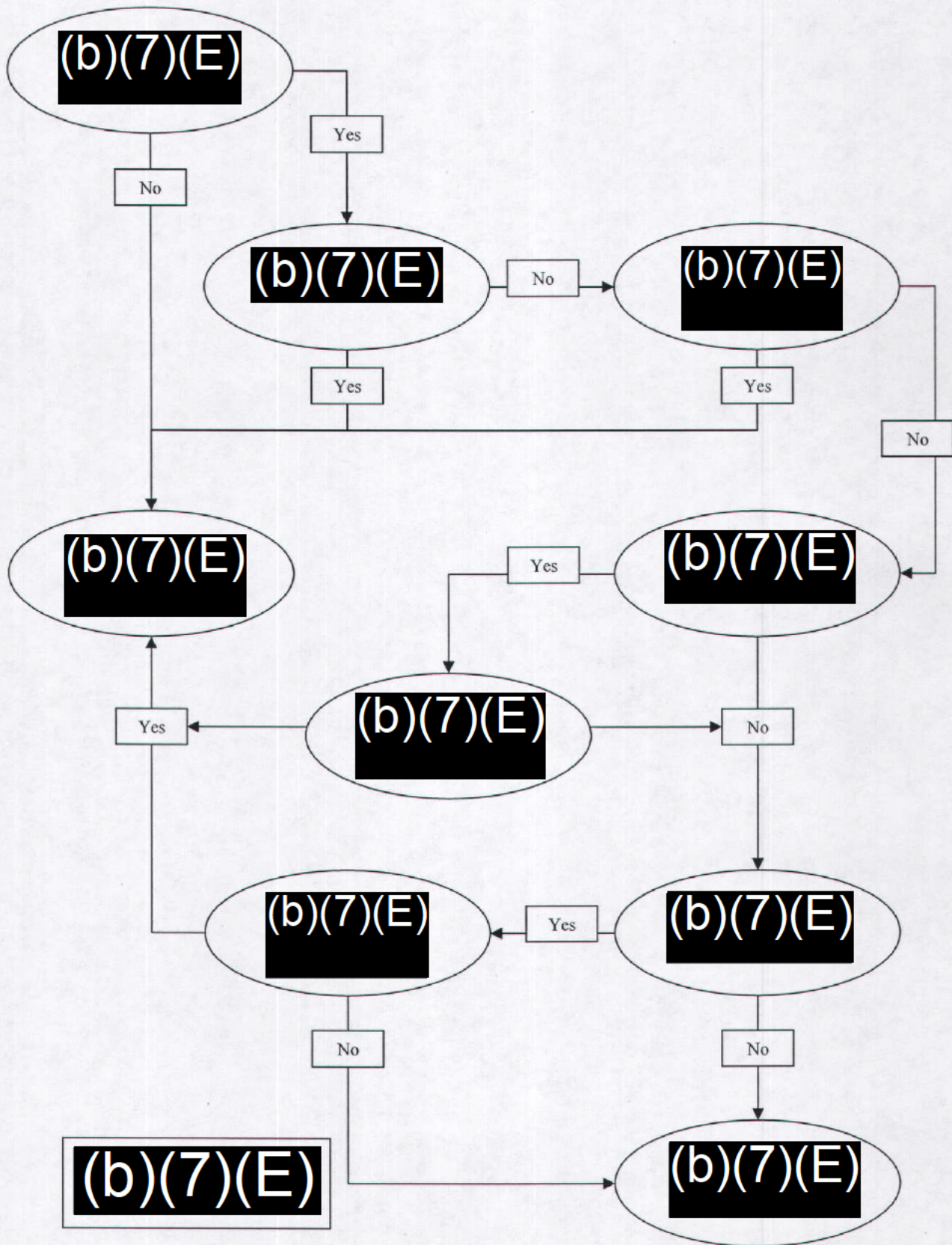
UAC A-File Preparation Guide

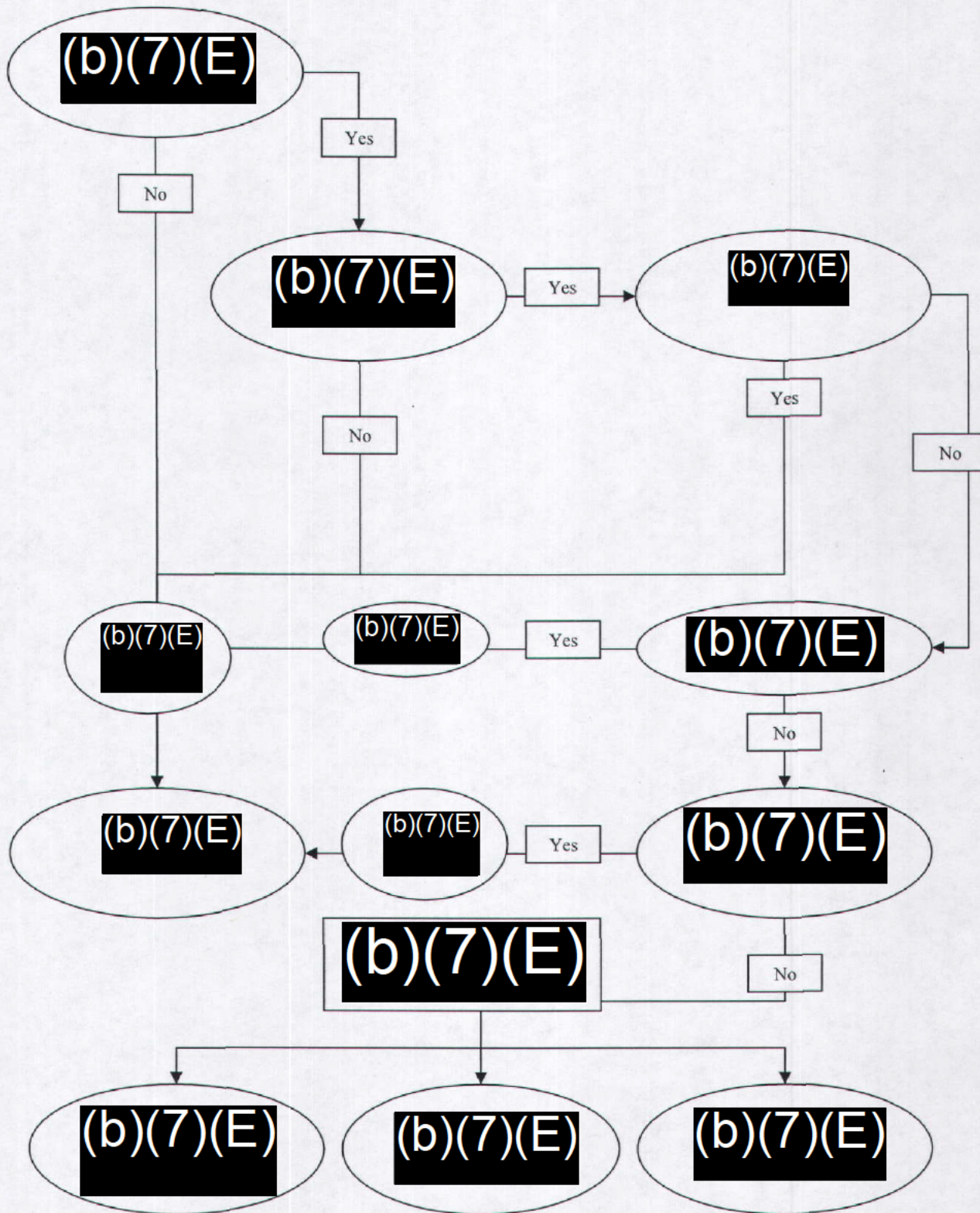
Not all forms will be used in every case. Follow existing local procedures to determine which forms are required based on the circumstances of the case. ***For children under 14 years of age, ORR will sign all legal documentation as well as receive all copies of legal documentation on behalf of the UAC.*** Additional documentation may be required by local policy.

- Record of Deportable/Inadmissible Alien (I-213 and continuation).
The original is placed in the A-file; no copy is provided to the UAC. The apprehending officer or agent should obtain as much detailed biographical information as possible. The following information must be included in the narrative of the Form I-213, if known:
 - Location of parent(s)/legal guardian(s)
 - Location and contact information of any relatives in the United States
 - Where and with whom did the UAC reside immediately before coming to the United States
 - Destination in United States
 - Present funds and anticipated method of support
 - Whether the UAC was smuggled and if so, the arrangements made
 - The health of the UAC: all claimed or apparent health issues must be documented
 - Any language that the UAC is able to speak, read, write and/or understand
 - Length of time in transit, from place of residence to the United States
 - Route of travel (e.g., countries, length of time spent in each, status in each, date of arrival at border, etc.)
 - Person the UAC is supposed to contact in the United States and phone number
 - Document any claims of fear expressed by the UAC
 - Additional elements may be required depending on the totality of the circumstances (e.g., fraudulent documents, trafficking, etc.)
- Notice to Appear (I-862).
This form should be signed by the authorized issuing official. The certification of service on the UAC is signed by the serving officer/agent and by the UAC. If the UAC is apprehended at a port of entry (POE), the UAC will be typically charged under both section 212(a)(7)(A)(i)(I) of the INA (as an alien not in possession of proper entry documents) and section 212(a)(4) of the INA (as an alien likely to become a public charge). If the UAC is apprehended between the POEs, the UAC will typically be charged under section 212(a)(6)(A)(i) of INA (as an alien present in the United States without benefit of admission or parole). Other charges may be lodged as appropriate.
- Notice of Rights and Request for Disposition (I-770).
The original is placed in the file and a copy is provided to the UAC. Ensure that appropriate boxes are completed on both sides. The apprehending officer or agent and UAC both sign.
- UAC Screening Addendum (CBP Form 93).
The original is placed in the file, no copy is provided to the UAC.
- Warrant of Arrest (I-200) (not applicable for arriving aliens).

Typically, the original and one copy are placed in the file; another copy is provided to the UAC. This form should be signed by the authorized issuing official. The certification of service on the UAC is signed by the apprehending officer and by the UAC.

- Notice of Custody Determination (I-286) (not applicable for arriving aliens).
Typically, the original and one copy are placed in the file; a copy is provided to the UAC. This form should be signed by the authorized issuing official. The certificate of service on the UAC is signed by the apprehending officer and by the UAC.
- Biographic Data for Travel Documents (I-217) or Single Journey Letter
The original is placed in the file.
- Fingerprints (R-84 and/or FD-249)
This applies to UAC 14 years of age and older.
- Photograph.
A photograph will be placed in the file. All UAC must be photographed.
- Modified Orantes Rights (For El Salvadorans only) (I-848 and I-848a).
The original is placed in the file and a copy is provided to the UAC. Explain the rights to UAC of all ages. This is signed by the apprehending officer or agent and the UAC.
- Notice to Detain, Remove, or Present Alien (I-259) (for arriving aliens only).
The original is placed in the file; a copy is provided to the carrier who brought the alien into the United States.
- Sworn Statement.
The original is placed in the file and a copy is provided to the UAC. Ensure that all pages are signed by the officer/agent and that the UAC initials all pages.
- Withdrawal of Application for Admission/Consular Notification (I-275).
The original is placed in the file and a copy is given to the UAC, if allowed to withdraw his or her application for admission. A copy should also be forwarded to the appropriate U.S. consular officials.
- Notice of Refusal of Admission/Parole into the U.S. (I-160A) (arriving aliens only).
The original is placed in the file and a copy is provided to the UAC.
- List of Free Legal Services.
A copy must be provided to the UAC. Follow local guidelines to document appropriately.
- Consular Notification as defined by 8 CFR 236.1.
The original is placed in the file.
- Discretionary Checklist and Third Party Notification (OFO only).
The originals are placed in the file.





DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM
Trafficking Victim Protection Act (8 U.S.C. 1232)

Alien's Name: _____

A NUMBER (if any)

A _____

Credible Fear Determination

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

Human Trafficking

Definition: Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18; or the recruitment, harboring, transporting, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

Below are examples of trafficking indicators. If one or more of these indicators is present, the interviewer should pursue age appropriate questions that will help identify the key elements of a trafficking scenario. If required, ensure that follow up questions are asked based on the answers given. Answers from these questions will assist an interviewer in determining if the Unaccompanied Alien Child may be a victim of trafficking. In all cases, use your training and experiences to be alert for indicators of human trafficking.

Trafficking Indicators and Suggested Questions

: (b)(7)(E) : (b)(7)(E) : (b)(7)(E)

(b)(7)(E)

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(b)(7)(E)

(b)(7)(E)

After interviewing the Unaccompanied Alien Child, reviewing the circumstances noted at time of apprehension and the information provided to me by the child, and based on my training and experience as a CBP Officer/Border Patrol Agent:

The Unaccompanied Alien Child DOES NOT appear to be a victim or potential victim of a severe form of trafficking, has not expressed a fear of returning to his/her country of nationality or last habitual residence, and has made an independent decision to request withdrawal or voluntary return. This Unaccompanied Alien Child will be processed according to established policy and procedures.

Name and Title of Interviewing Officer

Signature of Interviewing Officer

Date & Time

Name and Title of Authorizing Officer

Signature of Authorizing Officer

Date & Time

The Unaccompanied Alien Child MAY be a victim or potential victim of a severe form of trafficking; and/or expresses a fear of returning to his/her country of nationality or last habitual residence; and/or is unable to make an independent decision to withdraw his/her application for admission or for voluntary return; or no determination could be made within 48 hours of apprehension. This child is being referred to the Department of Health & Human Services as per 8 U.S.C. 1232.

Immediate notifications have been made to:

Health and Human Services (All Cases)

Date: _____ Time: _____
Office Contacted:
Name of Person Contacted:
Telephone of person Contacted:
E-mail notification to:

U.S. Immigration and Customs Enforcement (Office of Investigations)(Trafficking) :

Date: _____ Time: _____
Office Contacted:
Name of Person Contacted:
Telephone of person Contacted:
E-mail notification to:

U.S. Immigration and Customs Enforcement (Field Office Juvenile Coordinator)(All Cases) :

Date: _____ Time: _____
Office Contacted:
Name of Person Contacted:
Telephone of person Contacted:
E-mail notification to:

This Unaccompanied Alien Child will be processed according to established CBP policy and procedures for UAC.

Name and Title of Interviewing Officer

Signature of Interviewing Officer

Date & Time

Name and Title of Authorizing Officer

Signature of Authorizing Officer

Date & Time